IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 1292 OF 2004

Kashiram Ravaji Mene..... ....Appellant.

(Orig.Accd.)
V/s

The State of Maharashtra .... Respondents.

Ms.Smita Gaidhani, Adv. for the appellant.

Mr.P. S. Hingorani, APP for the State.

CORAM: V.G. PALSHIKAR
AND
NISHITA MHATRE, JJ.

20th November, 2006.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Sessions Judge, Ratnagiri, in Sessions Case No.4 of 2003 on 2.5.2003 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned Advocate for the appellants as also the learned Public Prosecutor we have scrutinized the entire evidence on and reappreciated the same.

3. The prosecution story as revealed by our reappreciation of evidence on record is that on 10.1.2002 at about 7.00 a.m. The complainant left his place

for work. The accused with two other lady members of the family were at home. Around 8.00 a.m. Accused left the family with the cattle and went to the field. After sometime Supriya also left home and went to fetch firewood. As Supriya did not return till noon Bhagirthi in order to find out as why she has not come went to the field when she noticed dead body of Supriya lying in the field with head crushed. She called the complainant and told him as to what had happened. The complainant therefore lodged a complaint on the basis of which investigation was undertaken, accused was arrested and the prosecution examined as many as six witnesses to prove its case. The learned trial Judge on appreciation of evidence on record convicted the accused as aforesaid. It is this order which is impugned in this appeal on behalf of the appellant.

4. PW1-Atmaram Mene is the brother of the accused and husband of the victim. He has deposed before the Court the grudge accused had against the family of the complainant. He spoke about earlier molestation of his wife by the accused. When he received the complaint, he went to the spot, saw the body, its head was crushed by a stone. He therefore lodged the First Information Report. He has stated before the Court the manner in which the body was discovered. He is not an eye witness.

5. PW2-Shivram Mene is the panch witness in whose presence the clothes of the accused were seized and he has deposed that when the seizure took place the clothes were stained with blood. His testimony therefore only proves that blood stained clothes were recovered on the person of the accused. PW3-Janardhan Nachare is the panch in whose presence the stone

weighing about 10 kg. was seized. It also had blood stains. PW4-Bhagirti Mene is the mother of the accused who speaks of previous assault and talks of accused coming, changing clothes and going away. She speaks of the accused having come back at 10.00 a.m. and telling her that he wants to go out in order to wash his clothes. Accordingly she deposes that prior to leaving the house after 10.00 a.m. Accused changed his clothes and the accused, according to the witness, never returned thereafter. The seizure of the clothes according to the testimony of PW2-Shivram Mene took place from the house of the accused at the instance of the accused and the clothes, according to the witness, were blood stained. However PW4-Bhagirti Mene the mother says that the accused kept the clothes which he was wearing in the morning on a bar from my house but she nowhere speaks of those clothes having any blood stains. In fact she was cross examined and a suggestion was made that she has falsely deposed about the accused going to wash his clothes. According to the suggestion of the defence the statement made by her that the accused kept his clothes i.e. white shirt, blue pant and a shawl on the bar itself is false. If this is so, how recovery becomes believable. Apart from that the main hurdle of the prosecution is the report of the Chemical Analyser according to which the blood analysis of objects was totally conclusive.

6. If PW4-Bhagirti is stating the truth then according to her she saw the accused coming out first at 7.00 a.m. Or 8.00 a.m. and then again at 10.00 a.m. She saw him coming into the house at 10.00 a.m. which of necessity would be after murder is committed. Yet she does not speak anything of his

clothes being stained with blood. It mentions his wanting to wash the clothes. Assuming that the blood was found on the clothes of the accused, it does not link in any manner with the blood of the victim so as to reasonably conclude that the blood was found on the clothes of the accused because it was he who was responsible for homicidal death of the victim.

7. PW5-Dr.Meera Mulye proved that the death of Supriya. But it is surprising that she does not speak anything about rape on the person of Supriya though complaint to that effect was made. Apart from that merely by proving homicidal death the prosecution cannot succeed in maintaining the conviction unless it proves that the accused was the person who was responsible for her homicidal death. In such circumstances we are unable to confirm the the judgment impugned in this appeal. The learned trial Judge erred in convicting the accused on such insufficient evidence. In the result, therefore, the appeal succeeds and is allowed. The accused is in jail. He is liable to be released forthwith if not otherwise required.